ILLINOIS POLLUTION CONTROL BOARD
September 16, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
V.	)	PCB 71-52
	)	
BATH, INC. AND JOHN L. WALKER	)	
BATH, INC,, JOHN L. WALKER AND JOHN H. WALKER	)	
	)	
V.	)	PCB 71-244
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	CONSOLIDATED

Larry R. Eaton, attorney for the Environmental Protection Agency
Lloyd F. Latendresse, attorney for Bath, Inc., John L. Walker and John H. Walker

Opinion and Order of the Board (By Samuel R. Aldrich):

On March 16, 1971, the Environmental Protection Agency ("Agency") filed a complaint against Bath, Inc. and John L. Walker. Respondent Bath, Inc. owns a landfill for the disposal of nonputrescible solid wastes at Decatur, Illinois. The landfill is operated by lessees, respondent John L. Walker and his first cousin, John H. Walker. The complaint alleges numerous violations of the Environmental Protection Act and of the Rules and Regulations for Refuse Disposal Sites and Facilities ("Land Rules"). At the hearing on July 12, 1971, the complaint was amended so as to reduce the number of alleged violations to five.

On August 18, 1971, Bath, Inc., John L. Walker and John H. Walker filed a petition for variance (PCB 71-244) requesting that they be granted either: "a) a variance to permit them to operate without the application of rigorous compaction and daily covering rules until the adoption of new rules on these matters, or b) in the alternative that petitioners be granted a variance for a period of one year if such new rules have not by that time been adopted." The enforcement case and the variation petition are herein consolidated.

As in similar cases involving landfills (EPA v. Sauget and Company, PCB 71-29, and EPA v. Clay Products Co., PCB 71-41) the evidence establishes certain charges and fails to establish others. We order that violations cease and a money penalty be paid.

Before addressing ourselves to the merits of the case, two matters require consideration. The first concerns the applicability of the Land Rules to the landfill site here in question. Said rules were promulgated in accordance with the Illinois Refuse Disposal Law enacted in 1965. Section 475 of that Act specifically excepted from its provisions any county having a department of public health. Macon County, in which the landfill site is located, was such a county. Respondents argue that, although Section 475 was repealed in 1967, the rules passed under other sections have not been made applicable to the counties originally exempted. We find this argument to be entirely

without merit. In repealing Section 475, the Legislature clearly intended the Illinois Refuse Disposal Law to apply statewide. The exemption afforded certain counties by that section disappeared with its repeal. Since that time, and at all times in question in this case, the Land Rules have been fully applicable to Macon County, and specifically to the landfill site in question.

A second matter concerns respondents' Request for Oral Argument. The Procedural Rules of the Board provide for opportunity for oral argument at the Board's discretion. Respondents suggest a number of reasons why permission for oral argument should be granted. We find that the merits of all substantive matters in the instant case are covered in previous decisions of the Board, or in the record and Briefs of the respondents and the Agency. Respondents' request for oral argument is denied. The proper place to argue the merits of the land disposal rules and regulations is in the Legislature or in public hearings held by the Board specifically for that purpose rather than in an enforcement case. This is discussed near the end of the opinion.

We now turn to the merits of the case. Respondents are alleged to have operated the landfill site without providing convenient sanitary facilities for their employees, in violation of Rule 4.03(c) of the Land Rules. The record shows that provision was made for sanitary hand-washing and toilet facilities as required by the regulations (R. 198, 199). The "convenience" of these facilities is somewhat difficult to judge. They are in a house which is situated on a hill, approximately thirty-five feet above the fill area (R. 99). Respondent Walker stated that the house is about a block away from the landfill (R. 53). An Agency inspector estimated the distance from the house to the actual dumping area to be three-sixteenths to a quarter of a mile (R. 100). Nevertheless, we judge the facilities to be adequate. As we noted in EPA v. Clay Products Co., PCB 71-41, we cannot expect toilets every thirty feet on a landfill site. We find no violation of Rule 4.03(c).

The Agency alleges that respondents have not been spreading and compacting refuse as required by Rule 5.06 of the Land Rules. The evidence indicates that refuse is normally deposited over the edge of an advancing column. The latter has varied in height from 8 to 17 feet above grade (R. 174). The sides are apparently somewhat sloping, but the face is almost vertical (R. 59). John L. Walker testified that he scatters refuse around, then compacts it by running over it with a bulldozer (R. 59). He admitted that this was a difficult task (R. 62). At the hearings, A. W. Borchers, registered agent for Bath, Inc., expressed his disagreement with the rules. Mr. Borchers asserted that daily compaction at a landfill of this type is an unnecessary hardship, particularly in wet weather when the use of a bulldozer is "impractical" (R. 236). He stated further that "adequate" compaction was being provided (R. 248), and that excessive compaction does not allow sufficient aeration for rapid decomposition (R. 261). Whatever the merits of these arguments, the rule is clear.

Refuse must be spread and compacted in shallow layers as rapidly as it is admitted to the site. It is evident that the height of the column and its steepness do not permit the degree of compaction required. We find that a violation was proven.

Respondents allegedly failed to provide daily cover for the refuse as required by Rule 5.07 of the Land Rules. There is ample proof of such violations. Agency inspectors testified that on several occasions no cover was provided (R. 116, 120, 121, 140, 158, 177). John L. Walker admitted that cover is not always applied, particularly in winter months (R. 65, 66). Although admitting that refuse sometimes isn't covered (R. 250), Mr. Borchers again disagreed with the regulations. He stated that daily covering in winter is impossible because the cover material freezes and cannot be used (R. 266). Again, however, irrespective of the merits of these arguments, the rules under which the Board must make a decision provide for no exceptions. All exposed material is to be covered at the end of each working day. We find that respondents are in violation of Rule 5.07.

We note further statements by Mr. Borchers that cinders are occasionally used for cover and that such material is compactable (R. 283, 284). In EPA v. Sauget and Company, PCB 71-29, we held that cinders are not acceptable as cover material because they cannot be compacted properly and thus allow more than minimal percolation of surface water. The use of cinders for cover must cease.

The Agency also alleges that respondents have permitted improper salvage operations in violation of Rule 5.10(a) and (d) of the Land Rules. The record indicates that respondents salvage cast iron, aluminum, copper and some wooden structures (R. 70, 124, 220). The rules specify that all salvaged materials must be removed from the landfill site daily, or be stored such that they do not create a nuisance, rat harborage, or unsightly appearance. Mr. Borchers stated that copper is removed daily, to prevent theft (R. 220). Other metals are removed only when a certain amount is collected. An Agency inspector testified that salvaged materials were not piled up in any particular way but were scattered over a large area (R. 125). There is also pictorial evidence that proper storage was not provided (EPA Ex. 6). Such practices clearly create a potential rat harborage and give the landfill an unsightly appearance. The latter is of less significance than in some other landfills because, as respondent points out, it is visible only from the premises. Granted that the rules with regard to proper salvage are in need of clarification, we find that the Agency clearly proved a violation in this case.

The final allegation is that respondents allowed underground burning in violation of Rule 5.12(d) of the Land Rules. The rules prohibit burning, except in an approved incinerator. There is ample evidence that underground burning has occurred. Agency inspectors observed it on several occasions (R. 108, 144, 145, 167, 168, 182). Both Mr. Walker and Mr. Borchers admitted that underground burning has occurred since November, 1970 (R. 83, 216). Respondents contended that everything possible was done to stop the burning, including the use of both dirt and water to extinguish the fire (R. 256). An

Agency witness indicated the only really effective method was to dig out the fire (R. 313). Mr. Borchers testified that this had been tried unsuccessfully (R. 257), but the record is inadequate as to just what effort was expended. In any event, respondents' attempts to extinguish subsurface fires met with little success for a period of several months, ending a few months before the date of the hearing. A number of persons living near the site testified that the landfill operation created objectionable odors from time to time (R. 315, 318, 323, 328). While there are other possible sources of odors (R. 332), it seems likely that underground burning is partly responsible.

Respondents contended that they did not "allow" underground burning as is alleged in the complaint. It is true that respondents did not start the fires themselves, nor did they give their consent for any burning. We hold, however, that the responsibility for burning must lie with respondents. To rule otherwise would be to permit an intolerable situation to continue. Respondents' poor practices with respect to compaction have likely contributed to their problems with burning. Improved operating procedures should minimize difficulties in the future. We find that respondents have allowed underground burning

One additional matter is worthy of comment. Much testimony was received concerning the merits of the Land Rules. Mr. Borchers expressed serious disagreement with many of the provisions of the rules. Indeed, Mr. Borchers, a member of the State Legislature, has sponsored a bill (House Bill 1844) that would amend the Environmental Protection Act so as to require the Board to promulgate rules and regulations which in certain respects are different for landfills handling only nonputrescible refuse versus those that accept putrescible materials (Resp. Ex. 3). That bill has been passed by the House and now awaits action by the Senate. Clearly, in this case we may not be guided by pending legislation. Until such legislation becomes law or the landfill rules are otherwise modified, we must act to ensure compliance with the existing rules.

In summary, we find violations with respect to spreading, compacting, covering, salvaging, and underground burning. We shall order that no further infractions occur and assess a penalty for past violations of $2000. From the record it is evident that the registered agent for Bath, Inc. has been largely responsible for determining the operating practices carried out at the landfill (R. 242, 249, 252, 254, 255). We shall therefore require the money penalty to be borne entirely by the corporate respondent.

We now consider the petition for variance. The principal contentions in the petition are: 1) that daily covering of a non-garbage landfill is unnecessary; 2) that continuous spreading and regular compacting operations of the material as received are unnecessary; 3) that John L. Walker and John H. Walker would suffer a hardship if required to fully comply with the rules pending possible adoption of new rules because they are not now equipped to operate the landfill in compliance with Rules 5.06 and 5.07; 4) that forcing the closure of the landfill would not be in the best interest of the City of Decatur and surrounding area.

We have held in the enforcement section of this opinion that we must require compliance with existing rules and regulations. We cannot exempt petitioners from such requirements even though the rules may be changed at some future date.

Granting of a variance is dependent upon a showing of an arbitrary or unreasonable hardship. In the instant case, petitioners have for several years been aware of the rules and regulations governing landfills, and could have made plans accordingly. It is not an unreasonable hardship to require the people of Decatur to pay for disposal of their nonputrescible wastes in a legal manner.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. Bath, Inc. and John L. Walker shall cease and desist from violations of the Rules and Regulations for Refuse Disposal Sites and Facilities and of the Environmental Protection Act as follows:

   a) Refuse shall be spread and compacted as rapidly as it is admitted to the site.

   b) Refuse shall be covered daily as required by the Rules.

   c) Cinders shall not be used as cover material.

   d) Salvaging shall be carried out in a sanitary manner, salvaged materials being removed from the site daily or properly stored as required by the Rules.

   e) Underground burning shall not be permitted.

2. Bath, Inc. shall within 35 days after receipt of this order pay to the State of Illinois the sum, in penalty, of $2000, the penalty to be borne by the corporate respondent.

I concur

Paul P. Currie

I dissent

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 16 day of September, 1971.

Regina E. Ryan